

3 FAM 4360

SEPARATION FOR CAUSE

3 FAM 4361 GENERAL

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

- a. It is the head of the agency's responsibility to determine whether to separate an employee for cause under section 610 of the Act. However, under certain circumstances, the head of the agency may not separate an employee for cause unless the Foreign Service Grievance Board has first determined that the agency has established cause for separation in a hearing before the Board.
- b. If the agency's proposal to separate the employee for cause is based on misconduct, the employee has a right to a pre-termination hearing before the Foreign Service Grievance Board (FSGB or Board) and the Board will determine whether cause has been established at this hearing.
- c. If the agency's proposal to separate an employee for cause is not based on misconduct, the employee is entitled to a pre-termination hearing before the Board only if the employee is serving under a career appointment. Employees with limited career or non-career appointments are not entitled to a hearing in this circumstance.
- d. If the employee waives his/her right to a hearing, the head of the agency or his/her designee will determine whether cause for separation has been established.

3 FAM 4362 INDEFINITE "SUSPENSION"

WHEN EMPLOYEE HAS BEEN CONVICTED OF A CRIME

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

- a. When an employee has been convicted of a crime for which a sentence of imprisonment may be imposed and there is a nexus to the efficiency of the service, the head of the agency or his/her designee may suspend the employee indefinitely without pay pending a decision on separation for cause, subject to reinstatement with back pay if cause for separation is not established in a hearing before the Board.

b. If 3 FAM 4351 – 3 FAM 4355 does not apply, the employee shall be given:

- Advance written notice of the specific reasons for such suspension;
- A reasonable time, not less than seven days, to answer orally and in writing;
- The opportunity to be represented by an attorney or other representative; and
- A final written decision.

c. If an indefinite suspension is imposed, the employee may grieve the suspension under chapter 11 of the Act and 3 FAM 4400 . The Foreign Service Grievance Board's review of the grievance is limited to a determination of whether the employee has been convicted of a crime for which a sentence of imprisonment may be imposed, and whether there is a nexus between the conduct and the efficiency of the service.

3 FAM 4363 PROPOSING OFFICIALS

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

The following officials are authorized to propose separation for cause against an employee:

Agency	Proposing Official
State	The Director General of the Foreign Service and Director of Personnel
USAID	Deputy Assistant Administrator (DAA/HR) or Inspector General (for OIG employees)
USIA	Director, Office of Human Resources (M/HR) or Director, Office of Personnel and Administration (B/PA)
Agriculture	Foreign Agriculture Service: First Line Supervisor APHIS: Deputy Administrator (IS); Associate Deputy Administrator; Assistant Deputy Administrator; Director, Operational Support; Regional Directors; Director, Human Resources; Chief, Employee and Management Support
Commerce	Director General, or equivalent official or designee

3 FAM 4364 ADVANCE NOTIFICATION OF UNSATISFACTORY PERFORMANCE OF DUTIES

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. Before separation for cause of an employee based on unsatisfactory performance of duties can be proposed, the supervisor must notify the employee in writing:

— Of the job requirements that the employee is failing to meet satisfactorily;

— That the employee has a 90-day period to bring performance to a satisfactory level;

— What the employee must do to bring performance to a satisfactory level in the 90-day period; and

— That the employee's performance will be reevaluated at the end of the 90-day period.

b. If there is evidence of inexcusable and egregious poor performance, the proposing official may waive the requirements of 3 FAM 4364a .

c. Separations of career candidates for unsatisfactory performance are governed by 3 FAM 2248 , 3 FAM 2257 , or 3 FAM 2268 and not by 3 FAM 4360 .

3 FAM 4365 PROPOSING SEPARATION FOR CAUSE

3 FAM 4365.1 Initial Proposal

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

If after consideration of the report of inquiry and the factors specified in 3 FAM 4324.3 , the proposing official decides to propose separation for cause, he/she shall notify the employee in writing:

(1) Of the specific reasons for the proposal to separate for cause;

(2) That the employee may respond orally and/or in writing and may submit affidavits and/or other written statements in support of that response to the proposing official;

(3) That the employee's response will be fully considered by the proposing official;

(4) That the employee may have a representative of the employee's choosing (see 3 FAM 4325);

(5) Of any decision to exclude the employee from Department premises during the notice period (see 3 FAM 4323);

(6) That the employee shall be granted a reasonable amount of official time to:

— Review the material relied on in proposing the action; and

— Prepare a response to the notice; and

(7) That the employee must acknowledge receipt of the notice of proposed separation for cause as instructed in the notice.

3 FAM 4365.2 Employee's Response

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. An employee abroad has 30 days from receipt of the proposal to respond in writing and/or orally to the proposing official.

b. An employee in the United States has 15 days from receipt of the proposal to respond in writing and/or orally to the proposing official.

c. The employee may submit a written request for an extension of the response deadline, and the deciding official should approve the request if it is reasonable.

3 FAM 4365.3 Action by the Proposing Official

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. After reviewing the report of inquiry and the employee's response, if any, the proposing official will decide:

— To withdraw the charges and close the case; or

- To admonish the employee; or
 - To reprimand the employee; or
 - To suspend the employee for a specific period of time; or
 - If the employee is entitled to a separation hearing and has not waived this right, submit to the Foreign Service Grievance Board a recommendation that the employee be separated for cause, along with the notice of proposed separation for cause, the employee's response, if any, and the record on which the proposal is based.
 - If the employee is not entitled to a separation hearing or has waived this right, submit to the head of agency or his/her designee a recommendation that the employee be separated for cause, along with the notice of proposed separation for cause, the employee's response, if any, and the record on which the proposal is based.
- b. The proposing official will notify the employee of his/her decision.
- c. If the decision is to reprimand or suspend, the notice shall contain the information provided in 3 FAM 4345 b or 3 FAM 4355 b , as appropriate.
- d. If the decision is to recommend that the employee be separated for cause, the notice shall include notice of any decision to exclude the employee from Department premises during the final decision process (see 3 FAM 4323).

3 FAM 4366 HEARING BY THE FOREIGN SERVICE GRIEVANCE BOARD

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

A separation for cause hearing before the Foreign Service Grievance Board will be held under the procedures provided in 22 CFR Part IV (Foreign Service Grievance Board Regulations) for those employees who are entitled to and do not waive such hearing.

A hearing shall be in lieu of any other administrative procedure authorized or required by the Act or any other law.

3 FAM 4367 DECISION BY FOREIGN SERVICE GRIEVANCE BOARD

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

After conducting a hearing on a proposed separation for cause, the Foreign Service Grievance Board shall issue a decision:

— Finding cause was established for separating the employee from the Service; or

— Finding cause was not established for separating the employee from the Service.

The decision shall include findings of fact and a statement of the reasons for the decision of the Board.

3 FAM 4368 DECIDING OFFICIAL

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

After considering the notice of proposed separation for cause, the employee's response, if any, the record on which the proposal to separate was based, and the Foreign Service Grievance Board's decision, if any, the head of agency or his/her designee, may decide to:

— Withdraw the charges and close the case; or

— Admonish the employee; or

— Reprimand the employee; or

— Suspend the employee for a specified period of time; or

— Separate the employee for cause, provided that, in a case where a hearing is held before the Foreign Service Grievance Board, the employee may only be separated if the Board finds cause for separation in its decision under 3 FAM 4366 .

b. The employee will be notified of the decision in writing.

c. If the decision is to separate the employee, the notice will:

— Advise the employee of the date the separation will become effective (e.g., 30 days from the date of the decision letter);

— Identify the specific charges in the proposal to separate for cause that have been sustained;

— Make specific reference to the employee's right to obtain judicial review of the decision of the Foreign Service Grievance Board under section 1110 of the Act.

d. If the decision is to separate the employee, a copy of the decision letter will be placed in the employee's Performance File when the separation becomes effective.

e. If the decision is to reprimand or suspend the employee, the notice will contain the information provided for in 3 FAM 4345 b or 3 FAM 4355 b , as appropriate.

3 FAM 4369 EFFECTS OF SEPARATION FOR CAUSE ON PARTICIPATION IN THE FOREIGN SERVICE, CIVIL SERVICE, OR OTHER GOVERNMENT RETIREMENT SYSTEM

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

Eligibility for retirement benefits under the Foreign Service, Civil Service, or other Government retirement system may be affected when an employee is separated for cause. Employees should consult the relevant statutes and regulations. For the Foreign Service retirement systems, these are section 610(b) of the Act and 3 FAM 6000 .

